

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 2.13.202, repeal of 2.13.201,)	PROPOSED AMENDMENT,
2.13.203, 2.13.205, 2.13.206, and)	REPEAL, AND ADOPTION
adoption of New Rule I pertaining to)	
implementing HB 27: Defining)	
eligibility and distribution of HB 27)	
surcharge funds for wireless 911)	
emergency systems)	

TO: All Concerned Persons

1. On March 5, 2008, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 152 of Capitol Building, Helena, Montana, to consider the proposed amendment, repeal, and adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on February 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Becky Berger, Department of Administration, P.O. Box 200117, Helena, Montana 59620; telephone (406) 444-1966; fax (406) 444-0165; Montana Relay Service 711; or e-mail BBerger@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.13.202 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Automatic location identification (ALI)" means the automatic display at a public safety answering point of the ~~subscriber telephone number, the service address for the telephone and supplementary information.~~ caller's telephone number, the address/location of the telephone, and supplementary emergency services information of the location from which a call originates.

(2) remains the same.

(3) "Billing address" means the place of primary use.

(3) remains the same, but is renumbered (4).

(5) "Cost recovery" means recovering costs associated with carrier network element upgrades necessary for location-based emergency services.

(6) "Location-based emergency services" means emergency communications applications that include information associated with a subscriber's location.

(4) (7) ~~"Selective routing" is a standard service which allows an enhanced 911 call to be routed to the appropriate public safety answering point based on the~~

calling party's telephone number. telephone system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated 911 jurisdiction.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-101, MCA

STATEMENT OF REASONABLE NECESSITY: (1) "Automatic location identification" needs to be changed because in the past, wireless providers were unable to deliver the service address of a wireless handset. This has evolved into a back-end database and computer-telephony application wherein this information is delivered. Location and supplementary information are no longer sent with the actual call. The technology has evolved toward location-based functionality that is external to the actual call, and this updated definition better reflects this evolution. If this definition is not changed, it could become a constraint to any law or rule that references this definition. This definition must be amended to reflect this change.

(3) "Billing address" needs to be defined as place of primary use because many of the billing addresses for wireless cellular services are located in areas different from where the cellular service is used. For example, the billing address for a large corporate cellular account might be quite far away from where the wireless phones are being used. HB 27 requires that wireless providers submit to the department quarterly subscriber counts. These subscriber counts are used to calculate the percentage due to the carrier when there are multiple providers applying for cost recovery in a jurisdiction. 10-4-115(1)(a), MCA, dictates that these subscriber counts be determined by billing address. By defining billing address as the place of primary use, a more accurate calculation of funds can be made. Also, if billing address is not defined as primary place of use, the wireless subscriber counts will be very inaccurate, and will not reflect real Montana wireless subscribers.

(5) "Cost recovery" is a standard industry term specific to recovering upgrading costs. It is necessary to define in this manner because Montana wireless providers can recover costs from 911 surcharge funds for allowable network expenses associated with location-based emergency 911 services.

(6) "Location-based emergency services" requires a specific definition for the purpose of constraining potential allowable costs from the wireless providers. Allowable costs for carrier cost recovery need to comply with Federal Communications Commission orders regarding location information associated with the delivery of the 911 call.

(7) "Selective routing" is no longer exclusively for enhanced 911 services. It also includes wireless calls, and potentially calls from other 911 accessible devices. The amended definition is also a more accurate description of what is entailed in selective routing.

4. The department proposes to repeal the following rules:

2.13.201 PURPOSE found at page 2-391 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-101, 10-4-102, 10-4-103, 10-4-104, 10-4-111, 10-4-112, 10-4-113, 10-4-114, 10-4-115, 10-4-121, 10-4-122, 10-4-125, 10-4-126, 10-4-201, 10-4-202, 10-4-203, 10-4-204, 10-4-205, 10-4-206, 10-4-207, 10-4-211, 10-4-212, 10-4-301, 10-4-302, 10-4-303, 10-4-304, 10-4-311, 10-4-312, 10-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal this rule because it unduly repeats statutory language.

2.13.203 DEPARTMENT OF ADMINISTRATION DUTIES AND POWERS found at page 2-392 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-102, 10-4-103, 10-4-104, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal this rule because it unduly repeats statutory language.

2.13.205 DISTRIBUTION OF BASIC AND ENHANCED EMERGENCY TELECOMMUNICATIONS ACCOUNTS found at page 2-393 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-121, 10-4-301, 10-4-302, 10-4-303, 10-4-311, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal this rule because it unduly repeats statutory language, and parts of it are no longer applicable.

2.13.206 911 PROGRAM FUNDS HELD IN RESERVE BY 911 JURISDICTIONS found at page 2-396 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-301, 10-4-302, 10-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: There is inadequate statutory authority for this rule, therefore, it must be repealed.

5. The rule proposed to be adopted provides as follows:

NEW RULE I WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS (1) If there are not enough funds to fully reimburse a wireless carrier for a particular quarter, the unpaid balance will be paid:

- (a) after the county's quarterly allocation for wireless has occurred; and
- (b) to the maximum of that carrier's quarterly calculated percentage for that county.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-301, 10-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: 10-4-313(1)(c), MCA, describes the processes involved if there are not enough funds in the per-county wireless accounts to pay the entire invoice from the wireless provider. This rule explains how the remaining balance will be paid. For subsection (1)(a), it is necessary that percentages be calculated and allocated before any outstanding balances are paid. This is an important distinction because if funds were not calculated before outstanding balances were paid, the money would be potentially depleted paying outstanding accounts, and no money would be left to pay other providers their due percentage. For example, if there are two providers applying for cost recovery in a jurisdiction, but the money was used to pay outstanding invoices for one of the providers, the other provider would not receive their fair percentage. Calculations and allocations should occur before any overdue monies are paid.

In subsection (1)(b), the maximum is specified to avoid depleting of funds before other providers get their share. For example, if a provider submits a large invoice, with amounts carried over, those outstanding balances will not be paid at the expense of what would normally be remitted to the other providers in a jurisdiction. If subscriber-based percentages are calculated first, the total due to providers can then be applied to any outstanding balances, without pulling potential funds from another eligible carrier.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Becky Berger, Department of Administration, P.O. Box 200117, Helena, Montana 59620; telephone (406) 444-1966; fax (406) 444-0165; or e-mail BBerger@mt.gov, and must be received no later than 5:00 p.m., March 13, 2008.

7. Jeff Brandt, Department of Administration, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.asp>. The department

strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on July 20, 2007, by U.S. mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State February 4, 2008